

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

### PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

#### Subpart A--General

##### Sec.

99.1 To which educational agencies or institutions do these regulations apply?

99.2 What is the purpose of these regulations?

99.3 What definitions apply to these regulations?

99.4 What are the rights of parents?

99.5 What are the rights of students?

99.6 [Removed and reserved]

99.7 What must an educational agency or institution include in its annual notification?

99.8 What provisions apply to records of a law enforcement unit?

#### Subpart B--What are the Rights of Inspection and Review of Education Records?

99.10 What rights exist for a parent or eligible student to inspect and review education records?

99.11 May an educational agency or institution charge a fee for copies of education records?

99.12 What limitations exist on the right to inspect and review records?

#### Subpart C--What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?

99.21 Under what conditions does a parent or eligible student have the right to a hearing?

99.22 What minimum requirements exist for the conduct of a hearing?

#### Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

99.30 Under what conditions is prior consent required to disclose information?

99.31 Under what conditions is prior consent not required to disclose information?

99.32 What recordkeeping requirements exist concerning requests and disclosures?

99.33 What limitations apply to the redisclosure of information?

99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

99.35 What conditions apply to disclosure of information for Federal or State program purposes?

99.36 What conditions apply to disclosure of information in health and safety emergencies?

99.37 What conditions apply to disclosing directory information?

99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

#### Subpart E--What are the Enforcement Procedures?

99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

99.62 What information must an educational agency or institution submit to the Office?

99.63 Where are complaints filed?

99.64 What is the complaint procedure?

99.65 What is the content of the notice of complaint issued by the Office?

99.66 What are the responsibilities of the Office in the enforcement process?

99.67 How does the Secretary enforce decisions?

#### Appendix

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

### Subpart A--General

#### Sec. 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in Sec. 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if--

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV -A-1 and IV -B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Note: (a) revised; (b) removed; (c), (d) and (e) redesignated (b), (c), and (d), respectively November 21, 1996, effective December 23, 1996.

#### Sec. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education

Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Note: Section revised November 21, 1996, effective December 23, 1996.

#### Sec. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to--

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are--

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Sec. 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that--

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are--

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities

that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to--

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print,

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Note: Section amended January 17, 1995, effective March 3, 1995. Definitions of "Act," "Disclosure," and "Record" revised November 2, 1996, effective December 23, 1996.

### Sec. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

### Sec. 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

Note: Heading amended January 7, 1993, effective February 25, 1993.

### Sec. 99.6 [Removed and reserved]

Note: Section removed and reserved November 21, 1996, effective December 23, 1996.

### Sec. 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to--

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and Sec. 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under Secs. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under Sec. 99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under Sec. 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g (e) and (f)).

Note: Section revised November 21, 1996, effective December 23, 1996.

### **Sec. 99.8 What provisions apply to records of a law enforcement unit?**

(a)(1) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a *law enforcement unit* if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any

local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of Sec. 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

Note: Section added January 17, 1995, effective March 3, 1995.

### **Subpart B--What are the Rights of Inspection and Review of Education Records?**

#### **Sec. 99.10 What rights exist for a parent or eligible student to inspect and review education records?**

(a) Except as limited under Sec. 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to--

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall--

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Note: (a), (b), (c), (d), (e), and the authority citation revised November 21, 1996, effective December 23, 1996.

### **Sec. 99.11 May an educational agency or institution charge a fee for copies of education records?**

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

### **Sec. 99.12 What limitations exist on the right to inspect and review records?**

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are--

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if--

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's--

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if--

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall--

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A), (B), (C), and (D))

Note: (a) and authority citation revised November 21, 1996, effective December 23, 1996.

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

### Subpart C--What are the Procedures for Amending Education Records?

#### Sec. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

Note: (a) revised November 21, 1996, effective December 23, 1996.

#### Sec. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall--

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall--

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Note: (a), (b)(1) introductory text, and (b)(2) revised November 21, 1996, effective December 23, 1996.

#### Sec. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

### Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

#### Sec. 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in Sec. 99.31.

(b) The written consent must--

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section--

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

Note: Heading and (a) amended January 7, 1993, effective February 25, 1993.

#### Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to--

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically--

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Sec. 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to--

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or



## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if--

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with--

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied

with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in Sec. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f)).

Note: (b) and authority citation amended and (a)(13) added January 7, 1993, effective February 25, 1993. (a)(6)(iii) redesignated as (a)(6)(iv) and new (a)(6)(iii) added; (a)(5)(i); (a)(9); and authority citation revised November 21, 1996, effective December 23, 1996.

### **Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?**

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include--

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include--

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Sec. 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to--

(1) The parent or eligible student;

(2) A school official under Sec. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

Note: (d)(5) added and the authority citation revised November 21, 1996, effective December 23, 1996.

### **Sec. 99.33 What limitations apply to the redisclosure of information?**

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to

whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if--

(1) The disclosures meet the requirements of Sec. 99.31; and

(2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under Sec. 99.31(a)(9), to disclosures of directory information under Sec. 99.31(a)(11), or to disclosures to a parent or student under Sec. 99.31(a)(12).

(d) Except for disclosures under Sec. 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of Sec. 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Note: (c) and (d) revised and (e) added November 21, 1996, effective December 23, 1996.

### **Sec. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?**

(a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall--

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless--

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if--

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Note: (a)(1)(ii) revised November 21, 1996, effective December 23, 1996.

### **Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?**

(a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must--

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if--

(1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

### **Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?**

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from--

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

Note: (b) and the authority citation revised and (c) added November 21, 1996, effective December 23, 1996.

### **Sec. 99.37 What conditions apply to disclosing directory information?**

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of--

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

### **Sec. 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?**

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Sec. 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

Note: Section added November 21, 1996, effective December 23, 1996.

## **Subpart E--What are the Enforcement Procedures?**

### **Sec. 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?**

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to--

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

Note: Heading and paragraphs (a) and (c) amended January 7, 1993, effective February 25, 1993.

### **Sec. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?**

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

### **Sec. 99.62 What information must an educational agency or institution submit to the Office?**

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

### **Sec. 99.63 Where are complaints filed?**

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

Note: Amended January 7, 1993, effective February 25, 1993. Amended November 21, 1996, effective December 23, 1996.

### **Sec. 99.64 What is the complaint procedure?**

(a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232g(f))

Note: (c) and (d) added January 7, 1993, effective February 25, 1993.

### **Sec. 99.65 What is the content of the notice of complaint issued by the Office?**

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under Sec. 99.64(b). The notice to the educational agency or institution--

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Sec. 99.64.

(Authority: 20 U.S.C. 1232g(g))

Note: Amended January 7, 1993, effective February 25, 1993.

### **Sec. 99.66 What are the responsibilities of the Office in the enforcement process?**

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section--

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

### **Sec. 99.67 How does the Secretary enforce decisions?**

(a) If the educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act--

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

Note: (a) and authority citation amended January 7, 1993, effective February 25, 1993.

## **Appendix**

Note: Appendix from final rule of November 21, 1996, effective December 23, 1996.

(Note: This appendix will not be codified in the Code of Federal Regulations.)

### **Model Notification of Rights Under FERPA for Elementary and Secondary Institutions**

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-4605

[Note: In addition, a school may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the University receives a request for access.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

(2) The right to request the amendment of the student's education records that the student believes are inaccurate or misleading.

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of

## PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by State University to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, 20202-4605

[Note: In addition, an institution may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]